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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHUN-HEE SONG

Appeal 2009-001764
Application 10/653,929
Technology Center 3600

Decided: December 22, 2009

Before ANTON W. FETTING, JOSEPH A. FISCHETTI, and BIBHU R. MOHANTY, *Administrative Patent Judges.*

FETTING, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Chun-Hee Song (Appellant) seeks review under 35 U.S.C. § 134 (2002) of a final rejection of claims 1-3 and 9-10, the only claims pending in the application on appeal.

We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION[1]

We AFFIRM.

THE INVENTION

The Appellant invented a method and apparatus for preventing a duplicate recording of a broadcasting program on a recording unit using additional information included in broadcasting signals (Specification ¶ 02).

An understanding of the invention can be derived from a reading of exemplary claims 1 and 10, which are reproduced below [bracketed matter and some paragraphing added].

> 1. A method of preventing a duplicate recording of a broadcasting program, comprising:
>
> [1] extracting additional information from a digital broadcasting program and recording the additional information

[1] Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed April 16, 2008) and the Examiner's Answer ("Ans.," mailed June 11, 2008), and Final Rejection ("Final Rej.," mailed September 12, 2007).

separately in an additional information storage unit, the additional information including title information and summary information;

[2] before entering a recording mode, reading the additional information corresponding to a to-be-recorded broadcasting program from the additional information storing unit;

[3] searching a recording unit and determining whether the recording unit stores title information corresponding to the to-be-recorded broadcasting program;

[4] if the title information corresponding to the to-be-recorded broadcasting program is detected from the recording unit, comparing summary information included in the read additional information with that stored in the recording unit in connection with the detected title information, and then calculating a correspondence ratio; and

[5] comparing the calculated correspondence ratio with a predetermined reference value, and if the correspondence ratio is less than the predetermined reference value, entering the recording mode to enable recording of the to-be-recorded broadcasting program on the recording unit.

10. The method of claim 9, wherein the title information includes information on a sequence number of the to-be-recorded broadcasting program.

THE REJECTIONS

The Examiner relies upon the following prior art:

Yap et al.	US 2001/0033736 A1	Oct. 25, 2001
Agnihotri et al.	US 2002/0081090 A1	Jun. 27, 2002
Kanemitsu	US 6,854,127 B1	Feb. 8, 2005

Claims 1-3 and 9 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Yap and Agnihotri.

Claim 10 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Yap, Agnihotri, and Kanemitsu.

ISSUES

The issues pertinent to this appeal are:

- Whether the Appellant has sustained the burden of showing that the Examiner erred in rejecting claims 1-3 and 9 under 35 U.S.C. § 103(a) as unpatentable over Yap and Agnihotri.
    - This pertinent issue turns on whether Yap and Agnihotri describe limitations [1] and [4] of claim 1.
- Whether the Appellant has sustained the burden of showing that the Examiner erred in rejecting claim 10 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Yap, Agnihotri, and Kanemitsu.
    - This pertinent issue turns on whether the Appellant's arguments in support of claim 9 are found persuasive.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to the Prior Art

Yap

01. Yap is directed to video-on-demand equipment and services. Yap ¶ 0002.

02. Yap describes an electronic program guide (EPG) that interacts with the system. Yap ¶ 0058. The EPG is enhanced with tags, which include data that is associated with or otherwise describes the content of a video selection. Yap ¶ 0060. For example, a tag may include movie data such as starring actors, the director, program title, a synopsis, release date, reviews, related programs, sequels, keywords, a thumbnail, a preview, or a snippet (Yap ¶ 0060 and ¶ 0131). The system scans the EPG for tagged content thereby allowing a user to search the EPG based on a tag or a combination of tags. Yap ¶ 0061 and ¶ 0131. Tags may be in-band or otherwise transmitted with the content. Yap ¶ 0060. Alternatively, tags maybe associated with the program or otherwise sent separately such as with the electronic program guide. Yap ¶ 0060.

03. The system further includes a duplicate episode filter. Yap ¶ 0133. When a user selects to record a program, the system references the storage device to check certain characteristics of the selected program with information stored in memory. Yap ¶ 0133. The system compares selected tag information with stored tag information to determine if a match exists. Yap ¶ 0134. If a matched is found in the memory, a duplicate notification is displayed to a user. Yap ¶ 0133. The system further includes the

ability to simultaneously record a program and playback another previously recorded program. Yap ¶ 0139.

Agnihotri

04. Agnihotri is directed to a system and method for determining whether a video program has been previously recorded by a video recorder (Agnihotri ¶ 0001).

05. The system comprises a transcript processor that obtains a transcript of an incoming video program by assembling the transcription from closed caption text, text from a speech to text converter, text from a third party source, or embedded screen text (Agnihotri ¶ 0012). The transcript processor then compares the transcript of the incoming video program with transcripts of video programs that have been previously recorded by the video recorder in order to determine whether the incoming video program has been previously recorded by the video recorder (Agnihotri ¶ 0012). If the program has been previously recorded, then it is not recorded a second time (Agnihotri ¶ 0012).

06. When a video program ends, the video recorder controller stops recording the video and assembles a transcript of the newly recorded video (Agnihotri ¶ 0053). The new transcript is added to a transcript database located in a plurality of transcript storage locations (Agnihotri ¶ 0053). The controller may further send the transcript to a hard disk to for storage (Agnihotri ¶ 0053).

Kanemitsu

07. Kanemitsu is directed to an improvement in recording functionality of broadcast content in a broadcast receiving apparatus (Kanemitsu 1:7-11).

Facts Related To The Level Of Skill In The Art

08. Neither the Examiner nor the Appellant has addressed the level of ordinary skill in the pertinent art video broadcasting and receiving systems. We will therefore consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) ("[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error 'where the prior art itself reflects an appropriate level and a need for testimony is not shown'") (quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985).

Facts Related To Secondary Considerations

09. There is no evidence on record of secondary considerations of non-obviousness for our consideration.

PRINCIPLES OF LAW

Obviousness

A claimed invention is unpatentable if the differences between it and the prior art are "such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill

in the art." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 13-14 (1966).

In *Graham*, the Court held that that the obviousness analysis is bottomed on several basic factual inquiries: "[(1)] the scope and content of the prior art are to be determined; [(2)] differences between the prior art and the claims at issue are to be ascertained; and [(3)] the level of ordinary skill in the pertinent art resolved." *Graham*, 383 U.S. at 17. *See also KSR*, 550 U.S. at 406. "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR*, 550 U.S. at 416.

ANALYSIS

Claims 1-3 and 9 rejected under 35 U.S.C. § 103(a) as unpatentable over Yap and Agnihotri

The Appellant first contends that (1) Yap and Agnihotri fail to describe extracting additional information from a digital broadcasting program and recording the additional information separately, as required by limitation [1] of claim 1. App. Br. 10-13. We disagree with the Appellant. Yap describes an electronic program guide that interacts with the system and categorizes information in the digital broadcast. FF 02. Yap further describes that information from a digital broadcasting program that is associated with the electronic program guide is stored in tags. FF 02. The tag is either in-band, transmitted and associated with the program itself, or can be sent separately such as with the electronic program guide. FF 02. The Appellant argues that the tags are not extracted from the program (App. Br. 11), however, a person with ordinary skill in the art would have known that in order to use

tags that are in-band, the tags must be extracted from the band. The Appellant further contends that the tags are provided by an outside source. App. Br. 11. The claim does not require specific origin for the extracted information and as such the Appellant's argument that the tag is provided by an outside source is not persuasive.

Agnihotri describes a system that assembles a transcript of a program and stores the transcript separately from the program in a transcript database. FF 05-06. The transcript is additional information of a digital broadcasting program and assemble of such information requires an extraction of information from the broadcast program. Agnihotri explicitly describes that the transcripts are stored in a transcripts database and other storage locations such as on hard disk. FF 06. As such, Yap and Agnihotri describe extracting additional information from a digital broadcast program and storing the additional information separately, required by claim 1.

The Appellant also contends that (2) Yap fails to describe that two separate characteristics are used in determining if a duplicate program exists, as limitation [4] of claim 1 requires a match between title information and summary information. App. Br. 13. We disagree with the Appellant. Yap describes a duplicate episode filter feature that determines whether a program selected for recording already exists in memory. FF 03. Yap specifically describes that characteristics, such as tag information, can be used to determine whether a match exists. FF 03. Yap further describes that tag characteristics for title information and a synopsis are provided for programs. FF 02. That is, certain characteristics, such as title and synopsis information, can be used to determine whether a match for a program selected for recording already exists. The Appellant contends that Yap is

only concerned with matching a single characteristic (App. Br. 13), however, Yap describes that multiple characteristics for a program can be used to determine if a match exists (FF 03). As such, Yap describes comparing title and summary information to determine whether a match exists.

The Appellant has not sustained the burden of showing that the Examiner erred in rejecting claims 1-3 and 9 under 35 U.S.C. § 103(a) as unpatentable over Yap and Agnihotri.

Claim 10 rejected under 35 U.S.C. § 103(a) as unpatentable over Yap, Agnihotri, and Kanemitsu

The Appellant contends that claim 10 depends from claim 9 and is patentable for the same reasons asserted in support of claim 9 *supra*. App. Br. 14. We disagree with the Appellant. The Appellant's arguments in support of claim 9 were not found to be persuasive *supra* and are not persuasive here for the same reasons. As such, the Appellant has not sustained the burden of showing that the Examiner erred in rejecting claim 10 under 35 U.S.C. § 103(a) as unpatentable over Yap, Agnihotri, and Kanemitsu.

CONCLUSIONS OF LAW

The Appellant has not sustained the burden of showing that the Examiner erred in rejecting claims 1-3 and 9 under 35 U.S.C. § 103(a) as unpatentable over Yap and Agnihotri.

The Appellant has not sustained the burden of showing that the Examiner erred in rejecting claim 10 under 35 U.S.C. § 103(a) as unpatentable over Yap, Agnihotri, and Kanemitsu.

DECISION

To summarize, our decision is as follows.

- The rejection of claims 1-3 and 9 under 35 U.S.C. § 103(a) as unpatentable over Yap and Agnihotri is sustained.
- The rejection of claim 10 under 35 U.S.C. § 103(a) as unpatentable over Yap, Agnihotri, and Kanemitsu is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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